

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 THE HONORABLE JAMES C. MAHAN, JUDGE PRESIDING

4
5
6 UNITED STATES OF AMERICA,

7 Plaintiff,

8 vs.

NO. 2:10-CR-0319-JCM-PAL

9 PARKER ENLOE,

SENTENCING

10 Defendant.
11 _____/

12
13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 FRIDAY, JANUARY 18, 2013

15 10:30 A.M.

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18 APPEARANCES:

19 For the Plaintiff: DANIEL SCHIESS, AUSA

20 For the Defendant: ROBERT DRASKOVICH, ESQ.

21 For Probation Dept.: BRIDGER FRANZEN, USPO

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23
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25 Reported by: Joy Garner, CCR 275
Official Federal Court Reporter

____JOY GARNER, CCR 275____
LAS VEGAS, NEVADA (702)384-3188

1 LAS VEGAS, NEVADA, FRIDAY, JANUARY 18, 2013

2 10:30 A.M.

3 * * *

4 PROCEEDINGS

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6 THE CLERK: This is the time set for
7 the imposition of sentencing of Parker Enloe,
8 Criminal Case Number 2:10-CR-0319-JCM-PAL, United
9 States of America versus Parker Enloe.

10 Counsel, please note your
11 appearances for the record.

12 THE COURT: Mr. Schiess.

13 MR. SCHIESS: Daniel Schiess for the
14 United States.

15 MR. DRASKOVICH: Good morning, I'm here
16 on behalf of Mr. Enloe who is present.

17 THE COURT: All right, is everybody
18 ready to proceed this morning?

19 MR. DRASKOVICH: Yes.

20 MR. SCHIESS: Yes, your Honor.

21 THE COURT: All right, Mr. Draskovich,
22 let me ask you and Mr. Enloe to approach the
23 lectern, please. Now should this be sealed?

24 MR. SCHIESS: No, your Honor.

25 THE COURT: All right. Any reason why

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1 sentence should not be imposed at this time?

2 MR. DRASKOVICH: No.

3 THE COURT: All right, Mr. Enloe, this
4 is the time set for imposition of sentence upon
5 you in Case Number 10-CR-319.

6 On July 16, 2010, you appeared
7 before the Court and entered a plea of guilty to
8 conspiracy to commit wire fraud, a violation of
9 18 USC, Section 1349, and at that time you also
10 agreed to the forfeiture of the following:
11 \$10,000 in United States Currency to the United
12 States of America pursuant to Federal Rule of
13 Criminal Procedure 32.2, Subsection (b)(1) and
14 (b)(2); 18 USC, Section 981, Subsection
15 (a)(1)(c); 28 USC, Section 2461, Subsection (c);
16 18 USC, Section 982, Subsection (a)(2)(A); and 21
17 USC, Section 853.

18 Having reviewed the presentence
19 report and plea agreement, the Court hereby
20 accepts your guilty plea and adjudicates you
21 guilty of the charge. Now, the defendant filed
22 with the Court and Probation Department
23 objections to the presentence report. Probation
24 filed an addendum to the presentence report on
25 November 5, 2012. Before we discuss those

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1 written objections, do you have any other
2 objections, Mr. Draskovich?

3 MR. DRASKOVICH: No.

4 THE COURT: Mr. Enloe, did you read the
5 presentence report?

6 THE DEFENDANT: Yes.

7 THE COURT: Did you discuss it with
8 your attorney?

9 THE DEFENDANT: Yes.

10 THE COURT: Did you find any errors or
11 discrepancies other than he may have pointed out
12 to me?

13 THE DEFENDANT: No.

14 THE COURT: All right. Now let's hear
15 your argument on the written objections?

16 MR. DRASKOVICH: If I could just submit
17 it on the written objections, they were fairly
18 minor and I did file with the Court a sentencing
19 memorandum at the beginning of this week and it
20 hinted on devoting a great deal of time and
21 perhaps the Court's attention to the issues that
22 have just recently arisen.

23 THE COURT: All right. Let me just
24 review these. (Reading.)

25 Frankly, I'm inclined to deny

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1 the first objection because the information there
2 was extracted apparently from the charging
3 document, is that correct, Mr. Franzen?

4 PROBATION OFFICER: Your Honor, this
5 case has gone back and forth and Officer Nagazino
6 (phonetic) now retired had actually did this
7 investigation and then I've since gotten in the
8 investigation and she answered and responded to
9 those objections when she was still actively on
10 duty. I believe those are all correct and
11 there's no reason for me to think otherwise.

12 THE COURT: All right, and then the
13 second one, of course, the offense was a
14 conspiracy and, you know, they're liable for
15 everybody else's actions. The third --
16 (Reading.) Now, probation says this appears to
17 conflict with the facts contained in the plea
18 agreement. So I'm inclined to deny that on that
19 basis unless you have anything to add, Mr.
20 Draskovich.

21 MR. DRASKOVICH: No, I don't.

22 THE COURT: All right. The Probation
23 Department calculated -- I'm inclined to deny all
24 of those written objections then for the record,
25 Mr. Franzen.

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1 PROBATION OFFICER: Thank you, your
2 Honor.

3 THE COURT: Yes, sir.

4 Okay, the Probation Department
5 calculated the base offense level to be seven.
6 Fourteen levels were added because of the loss
7 amount was at least \$400,000, but not in excess
8 of \$1 million pursuant to Sentencing Guideline
9 Section 2B1.1, Subsection (b)(1)(h), which makes
10 an adjusted offense level of twenty-one.

11 Mr. Schiess?

12 MR. SCHIESS: Your Honor, while you
13 were denying those, I had a chance to go back and
14 read them again. I submitted to the Court my
15 objections to the sentencing memorandum, but with
16 respect to the specific facts of a long-term
17 conspiracy here between a number of players that
18 started in '07 to '09, Mr. Enloe joined that
19 conspiracy probably in early '09. He was only in
20 it for about a three- or four-month period. So
21 while the conspiracy was larger and --

22 THE COURT: -- his involvement was
23 smaller.

24 MR. SCHIESS: Yeah, the PSR is correct
25 and the conspiracy was '07 to '09, his

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1 participation, and it was only for about four
2 months which is consistent with his objection
3 number one, and would also be in part consistent
4 with his objection number three, and then there's
5 just some detail of who he actually loaned the
6 money to and who he didn't and minor, but I need
7 the Court to know that in terms of the timing of
8 it.

9 THE COURT: All right, I understand
10 that. I mean if you want I can say just add a
11 sentence that although all conspirators are
12 liable for the actions of all other conspirators,
13 his involvement was only from -- when was his
14 actual involvement?

15 MR. SCHIESS: I would just -- I don't
16 know the beginning date, but it would be for a
17 three- or four-month period or maybe a two-month
18 period in early '09.

19 THE COURT: Okay, but his involvement
20 was only in -- just add that if you would, Mr.
21 Franzen, although a conspirator is liable for all
22 acts of all other conspirators, Mr. Enloe's
23 actual involvement was only in the months of
24 2009.

25 PROBATION OFFICER: Your Honor, if I

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1 may suggest that we add that into paragraph 8 on
2 page 6 at the beginning where it talks about Mr.
3 Enloe's involvement.

4 THE COURT: That's fine.

5 All right, the Probation
6 Department calculated the base offense level to
7 be seven. Fourteen levels were added because the
8 loss amount, as I said, was at least \$400,000 but
9 not in excess of \$1 million which makes an
10 adjusted offense level of twenty-one. A
11 three-level reduction for acceptance of
12 responsibility was applied resulting in a total
13 offense level of eighteen. The total criminal
14 history points are zero resulting in a criminal
15 history category of Roman numeral I.

16 The maximum statutory term of
17 imprisonment is thirty years. The maximum
18 statutory fine is \$1 million, and a special
19 assessment of \$100 per Count is mandatory. Based
20 on a total offense level of eighteen and a
21 criminal history category of Roman numeral I, the
22 guideline range is 27 to 33 months with a
23 supervised release term of three to five years
24 and the guideline fine range was \$6,000 to \$1
25 million.

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1 And then on October 24, 2012,
2 the government filed a sealed motion -- was that
3 under seal?

4 MR. SCHIESS: Yes, your Honor. It no
5 longer needs to be under seal.

6 THE COURT: So it will be unsealed
7 then, a motion seeking a four-level downward
8 departure for defendant having provided
9 substantial assistance to the government in the
10 investigation of other conspirators, or another
11 person I should say, who had committed an
12 offense. So the government's motion is based on
13 Sentencing Guideline Section 5K1.1.

14 And the basis for that -- I
15 don't know -- the basis it's in the motion, but
16 applying that downward departure, the total
17 offense level then would be fourteen with a
18 criminal history category of Roman numeral I and
19 a guideline range of fifteen to twenty-one
20 months. On January 15, 2013, the defendant filed
21 a sentencing memorandum with the court requesting
22 a downward adjustment, if you will, from the
23 guideline range under the factors set forth in 18
24 USC, Section 3553(a), requesting a term of
25 probation.

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1 All right, Mr. Schiess, any
2 additional comments before I impose sentence?

3 MR. SCHIESS: Your Honor, the comments
4 I make are set forth in the sentencing
5 memorandum. I do want to point out, though, that
6 in terms of the culpability of many of the other
7 players in this case, Mr. Enloe's culpability is
8 less because his involvement was much less. His
9 role was simply loaning the down payment. He was
10 in the business of investing money for his group
11 of investors and he was to make a fee off of his
12 investments for them.

13 His role in this particular
14 conspiracy was limited to four properties. Those
15 four properties, though, went into foreclosure.
16 They were each fraud. Lenders suffered between
17 \$400,000 and \$1 million, closer to \$1 million of
18 loss given the actions of the other people, and
19 so while his culpability is less than others as
20 to these four transactions, they were his actions
21 and an integral part.

22 We have, in negotiating a plea
23 agreement, we recommended to the Court that
24 the -- and negotiated a plea in which we
25 recommended to the Court that there was a

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1 sentencing range based on the loss calculation
2 would be between \$400,000 and \$1 million for a
3 loss calculation, and that reflects the loss
4 range for properties, but he was also involved in
5 another scheme that involved more money which
6 would have taken it up to the next bracket of
7 loss, but we didn't count that.

8 Now, with respect to the
9 objections that Mr. Enloe is making for the
10 cooperation and to point out his cooperation, our
11 recommendation for four levels is a fair
12 recommendation because he did not testify,
13 although that was our choice. He came down
14 prepared to testify and met with us and he met
15 with other law enforcement agencies. So I feel
16 like we have given him the benefit of the next
17 level up for having testified by pointing him out
18 to the four levels.

19 The final issue that he's
20 objecting to and wants to address to the Court is
21 the matter of his children. I understand from
22 talking with Mr. Draskovich and then with Mr.
23 Enloe's civil attorney, Mr. Michael Van, that
24 there are extenuating circumstances. What I
25 would like to do is to hear their position to the

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1 Court on that.

2 I'd point out to the Court that
3 at this point in time their motions I don't
4 believe provide substantial information which
5 they certainly have the opportunity to supplement
6 it here. Based upon that, those would be our
7 recommendations to stay within the range unless
8 there's an extenuating circumstance the Court
9 finds --

10 THE COURT: All right, and after we've
11 heard that, I'll give you a chance to respond
12 finally.

13 MR. SCHIESS: With respect to the
14 restitution, I can save that argument for later.
15 There's some points I need to raise to the Court.
16 I'm going to ask the Court to defer ruling on
17 that until I have the time to continue to collect
18 more information. The four lenders which we
19 identified as being the victim lenders are
20 Freddie Mac and Fannie Mae. We have been, shall
21 we say, working with a lot of effort to get
22 information from Fannie Mae, and they've been
23 cooperative.

24 THE COURT: Lots of luck.

25 MR. SCHIESS: Well, they've been very

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1 cooperative and they've been helpful, but the
2 information they give me, you almost need to
3 understand Latin or Greek to be able to follow
4 the maze, and they've been trying to straighten
5 it out. So I need to go back and subpoena more
6 information from other entities to be able to
7 make it very accurate of what we should do.

8 THE COURT: All right, okay, and I do
9 want it to be accurate.

10 MR. SCHIESS: But we're prepared on
11 restitution to go forward on one property, but I
12 would like the opportunity to address the --

13 THE COURT: And it should be complete,
14 you should have all the properties.

15 MR. SCHIESS: So if we can set some
16 sort of hearing for sometime later while I
17 continue to drag more information out of the dark
18 caves.

19 MR. DRASKOVICH: And we have no
20 objection to that.

21 THE COURT: All right then.

22 Mr. Enloe, would you like to
23 address the Court, would you like to have Mr.
24 Draskovich speak on your behalf? Or both of you
25 may speak, it's your option.

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1 THE DEFENDANT: I would just -- I'm
2 very sorry for what I did. It's one of the
3 things I regret and I hate to see anyone lose
4 money. It's happened to me before when I've been
5 defrauded and so I apologize and I want to make
6 things as right as possible, but I do have four
7 wonderful kids at home and they live with our
8 personal situations right now. They need me more
9 than ever in their lives.

10 MR. DRASKOVICH: There were a number of
11 issues that Mr. Schiess had addressed and we take
12 no issue with the four points. As the Court is
13 well aware, generally that committee comes out
14 with one point, two points, and in this case we
15 have four, so we have no objection whatsoever to
16 the request for four, and I think that's
17 appropriate under the circumstances.

18 What I wanted to address in my
19 argument is primarily our request for the Court
20 to depart downwards four points, and our basis
21 for this request comes under 5H1.6 of the
22 sentencing guidelines, and I would submit to the
23 Court that under the circumstances of this case,
24 we do have the irreplaceable caretaker which has
25 just come about in the last few months.

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1 Mr. Parker (sic) has four
2 children: Camden, who is 9; Owen, who is 7;
3 Leif, who is 5; and Ayla, who is 2. Four months
4 ago, their mother left them. She came to a point
5 in her life in which her life-style changed. The
6 life-style that she has chosen and will continue
7 to choose it appears is unsuitable for the
8 raising of children. They live in Utah and in
9 Utah the Division of Family Services have found
10 her to be unfit to be a mother and now Parker
11 Enloe is the sole provider and sole parent of
12 these three boys and this little girl.

13 The cases we had cited in our
14 brief, the Leon case and the Menyweather case,
15 dealt with basically these departures for family
16 responsibilities and where the defendant was the
17 only person that could provide for the care of a
18 loved one whether it be an elderly spouse or a
19 child. Both the Leon case and the Menyweather
20 case dealt with adults. The Leon case dealt with
21 an adult who had emotional needs. The
22 Menyweather case dealt with an adult, a spouse,
23 who was dealing with cancer.

24 In this case, I would submit --
25 and in the Leon case there was a six point

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1 downward departure. In the Menyweather case
2 there was an eight point departure. In this case
3 we're asking for four points, a lesser departure,
4 however, I would submit to the Court that the
5 needs of the family members in this case are
6 greater than those in the Leon case and the
7 Menyweather case.

8 This Court is well aware that
9 the formative years are from basically one to
10 sixteen. Here we have a two-year-old, a
11 five-year-old, a seven-year-old, and a
12 nine-year-old who have lost their mother. The
13 Department of Justice keeps statistics on death
14 row inmates and they found that the vast majority
15 of those sitting on death row suffered
16 abandonment from both mom and dad.

17 These little children only had
18 one mother and only had one father, and I would
19 submit to the Court that the fact that the mother
20 has abandoned them has made their father even
21 more irreplaceable. They only have one parent.

22 THE COURT: What about the
23 grandparents?

24 MR. DRASKOVICH: The grandparents are
25 in their late 60's. They live -- they don't live

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1 in Alpine, Utah. Both grandma and grandpa work
2 full-time. Grandma is a teacher, Grandpa works
3 as a physical therapist in the school district,
4 and to be quite honest they really don't want to
5 take care of these kids. They've raised kids,
6 they've moved on. I can appreciate the Court's
7 concern and the government's concern regarding,
8 well, who else can take care of these kids.

9 Mr. Parker works full-time and
10 he has a live-in nanny who cares for the children
11 approximately eight or nine hours a day Monday
12 through Friday. His family is not even caring
13 for his kids right now. In the event that he
14 were to be incarcerated, the kids very likely
15 would either go into foster care or be divided
16 and having lost a mother, these kids ranging from
17 two to nine really bonded with each other because
18 they're striving to find some sense of solidity
19 and continuance in their lives.

20 Mr. Van, who is at the table,
21 worked out this separation and ultimate divorce
22 between Mr. Parker's soon-to-be ex-wife and Mr.
23 Parker. He has personal knowledge of the
24 children, their extended relatives, uncles,
25 aunts, and grandparents, and he is here today and

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1 he is in the gallery if the Court could allow me
2 to call him.

3 THE COURT: Sure, come forward, Mr.
4 Van.

5 MR. DRASKOVICH: And now Mr. Schiess
6 said these two gentlemen have known each other
7 for a long time and Mr. Schiess now is going to
8 have an opportunity to cross-examine --

9 THE COURT: You don't need to take the
10 stand. I know Mr. Van. Mr. Van is a licensed
11 attorney here in Nevada and probably in Utah as
12 well.

13 MR. VAN: Yes, your Honor.

14 THE COURT: And I was an attorney for
15 25 or 30 years, Mr. Van. So I'll take it --
16 you're an officer of the court and I'll take your
17 statement.

18 MR. VAN: Your Honor, I was retained by
19 Mr. Enloe with regard to the divorce, and I will
20 as briefly as I can, about three months ago a
21 situation came up where Parker's wife, Aria, was
22 addressed by state agencies as a result of an
23 inappropriate relationship she was having with a
24 seventeen-year-old girl. The Department of
25 Family Services have made it clear that she is

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1 not a viable option. The only reason that they
2 are not prosecuting that case right now is the
3 parents of that seventeen-year-old have younger
4 children as well as Mr. Enloe's children, and
5 they are concerned about the ramifications in the
6 community.

7 More importantly -- well,
8 additionally, that seventeen-year-old just turned
9 eighteen and has moved in with Aria as a
10 companion. It's a messy situation. She, Aria,
11 has no desire to have the children. I, in
12 fact -- before the divorce I sat down and said to
13 her, you understand -- she took \$2,000 and moved
14 out -- and I said, you understand you need to get
15 separate counsel. I don't want separate counsel.
16 You understand that you could get more money and
17 you could get visitation. I don't want it. I
18 don't want anything to do with this.

19 One of the struggles that we're
20 having now is that, for example, last weekend
21 Parker called me up and said, I don't know what
22 to do. This was her weekend for some time --
23 Saturday she was going to spend with the kids, I
24 was going to leave the house so that she could
25 stay in the house because she doesn't have

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1 anywhere to take them, and she showed up and
2 said, I'd rather go to a party with my friends.

3 The implications that they have
4 on their children right now is they've got the
5 children to feel like mom just doesn't care. Mr.
6 Enloe has some siblings. One lives in Colorado,
7 a full-time worker, he works at a hotel situation
8 so he's a 24/7 guy. He has a sister that lives
9 in Colorado who married a Czech National who is
10 moving back to Czechoslovakia.

11 He has a sister who lives here
12 that just had a baby and really doesn't have any
13 interest in having four kids, and then he has a
14 brother and the brother and his wife both are --
15 it's a two-income home in order to support their
16 four children and addressing that with them is,
17 can we get any assistance from the state, what
18 can we do? And I said, no, that's not available.

19 And so the only real viable
20 option is either to allow him to raise his
21 children or they're going to have to go to foster
22 care or be separated. The nanny issue is
23 actually kind of an interesting issue because
24 it's an extra bedroom, will you watch my kids,
25 and you can eat all my food that you want

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1 situation. And when she has called sick and
2 said, I've got to -- I can't take care of your
3 kids today, I've got to go do something else, he
4 has to leave work and take days off and do that.

5 He is the only one that really
6 has taken care of these children, and I know that
7 the oldest boy, nine-years-old, is involved in
8 sports, and Parker is very, very supportive of
9 his children. He goes to every event. He's a
10 minivan dad and I've teased him about it. It's
11 very critical that he be allowed the opportunity,
12 there's just no other option.

13 And I appreciate that the
14 Court -- I have the greatest regard for the Court
15 and respect it and this is an instance where I
16 would just implore the Court for leniency to
17 allow him even a house arrest issue. The house
18 to be home in order to go to work and back,
19 whatever, but I just -- I can't think of another
20 option that's available.

21 THE COURT: Are the children with him
22 now? I mean here or in Alpine --

23 MR. DRASKOVICH: Alpine, Utah.

24 MR. VAN: The company relocated in
25 about 2007 from Las Vegas, and so there was just

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1 some transactions here that were winding up, but
2 they live in Alpine, Utah, yes, sir.

3 THE COURT: Where is Alpine? I'm not
4 familiar with Alpine.

5 MR. VAN: Alpine is north of Provo,
6 south of Salt Lake.

7 THE COURT: Okay.

8 MR. VAN: It's kind of at the point of
9 the mountain just south of the point of the
10 mountain not too far. If you draw the
11 schematics, it's across the street and into the
12 mountains from that Thanksgiving point. Well,
13 here let me make this reference because it's the
14 easiest one for me. It's behind Cabela's is my
15 reference.

16 THE COURT: All right, and understand
17 because I hear this -- and Mr. Draskovich and Mr.
18 Schiess can attest to it -- all the time, you
19 know, oh, don't send me to prison, I've got to
20 take care of my kids, I've got to take care of my
21 sick mother. I mean we hear this all the time,
22 you know, so it's a common request.

23 MR. VAN: Well, I understand, your
24 Honor. If you have any questions about this
25 situation, I'm more than happy to answer any one

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1 you've got.

2 THE COURT: Mr. Schiess, do you have
3 any questions you want to propound? I know he's
4 not under oath, but as one attorney to another.

5 MR. VAN: I think that he would prefer
6 that I get up there and have an open season,
7 but --

8 MR. SCHIESS: Well, since I've known
9 Mr. Van for about twenty years, I would relish
10 the opportunity, but there's nothing relevant to
11 this proceeding, and I have a lot of respect when
12 I say that. I do have just an observation to
13 make about that to follow-up and kind of
14 interject with a counter argument if I may.

15 You know, while everybody has a
16 unique situation and the Court certainly has to
17 take individual situations and facts into
18 account, the Court still has to look at a
19 parenting situation and there have been -- I'm
20 thinking of a specific instance several months
21 ago in front of Judge Dawson where a similar
22 situation arose where there was a mid-30's
23 African female single mom with a kid who was
24 teen-aged and a kid in a single digit age, had no
25 parent.

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1 And she was still in a mortgage
2 fraud case with a sentence of 24 months and not
3 knowing where the kid was going to have to go,
4 her parents lived in Costa Rica and the judge
5 said, you're going to have to deal with that
6 issue.

7 But, you know, I understand that
8 you need to take into account individual factors,
9 and there are four kids here and they're little
10 kids who are presently being traumatized by a
11 situation not of Mr. Enloe's doings, although the
12 crime and the consequence are Mr. Enloe's doing,
13 so I defer to you.

14 THE COURT: All right.

15 MR. SCHIESS: And if you are going to
16 lower the sentence, if you're contemplating that,
17 if you were to lower it three points, you would
18 take it to the top of Zone B which would give you
19 the option of sentencing him to home confinement
20 for eight to fourteen months and then other
21 conditions that probation can explain.

22 THE COURT: All right.

23 MR. SCHIESS: But I don't think you
24 need to go down four levels.

25 MR. VAN: Your Honor, do you have

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1 anything else of me?

2 THE COURT: No, I don't. Thank you,
3 Mr. Van. Thank you for your time.

4 MR. VAN: All right, thank you.

5 MR. DRASKOVICH: Just briefly, and I
6 can appreciate Mr. Schiess's comments. There is,
7 however, a fundamental difference between a
8 single parent, i.e., a parent who has a child and
9 raises that child alone versus children who have
10 two parents and then are ultimately abandoned by
11 one. I mean both of them are very tragic
12 situations, however, I would submit to the Court
13 that the latter, their actually being abandoned
14 by mom, is worse.

15 I'd also submit to the Court
16 that it's fairly extraordinary to have four
17 children from nine under. I mean it's -- I don't
18 know very many people that have four kids under
19 the age of ten. I don't know of a single
20 situation. I've never heard of a single
21 situation where a mother of four children, two to
22 nine, leaves, just up and leaves and doesn't want
23 to see them anymore. So I would urge the Court
24 to take that into consideration in determining
25 whether or not this is an extraordinary

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1 situation.

2 Additionally, and I can
3 appreciate that downward departures generally in
4 all situations where the defendant is an
5 irreplaceable caretaker of children and the
6 extent of the departure appropriately serves to
7 protect those family members from the impact of
8 the defendant's prolonged incarceration, in this
9 case fifteen months is an eternity to a
10 two-year-old or to a five-year-old or to a
11 seven-year-old.

12 I remember the times back when
13 summer break of three months was a lifetime in
14 and of itself. Based upon the very tender age of
15 these children, and there are special
16 circumstances in this case, I would urge the
17 Court to take three points and sentence him to
18 home confinement and whatever other conditions
19 that the Court sees fit. With that, I'll submit
20 it.

21 THE COURT: All right, and do you want
22 to add anything, Mr. Franzen? I'll give you a
23 chance.

24 PROBATION OFFICER: I think I should,
25 your Honor, for clarification sake. This is a

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1 case that the guidelines that apply to this case
2 are the 2009 guidelines, and at that time it
3 would be a four level additional departure down
4 to reach the top of Zone B, however, because of
5 the Count of conviction, probation is excluded
6 from -- by statute probation cannot be imposed.
7 However, the Court can impose a sentence of one
8 month custody with a term of supervised release
9 to follow as long as one month is fulfilled by
10 imprisonment according to the guidelines in Zone
11 B.

12 MR. DRASKOVICH: The plot thickens. If
13 the Court were to do that, I think it would be
14 much easier and it would be much more suitable.
15 Perhaps they could deal with it for a month and
16 split the kids up for just a month while he
17 served a period of incarceration for a month
18 versus fifteen.

19 THE COURT: All right, okay. That's
20 why I get the big bucks. All right, anything
21 else from anybody?

22 Okay. And, Mr. Enloe, did you
23 want to add anything? I'll give you a chance if
24 you want to add anything.

25 THE DEFENDANT: I just, you know, I

1 want to make it right as much as I can, and it
2 would be much easier to do so if I'm not
3 incarcerated.

4 THE COURT: All right.

5 All right, having heard
6 statements of counsel for the government and
7 counsel for the defendant and having heard from
8 Mr. Van, as I noted a licensed attorney in Nevada
9 and I think in Utah as well, is that correct,
10 Mike?

11 MR. VAN: That's correct, your Honor.

12 THE COURT: And from a personal note,
13 I've litigated against Mr. Van I'm sure on many
14 occasions, so I know Mr. Van well. Having heard
15 the defendant's remarks and Mr. Van's remark,
16 having read the presentence report submitted by
17 Probation Department, considering its contents
18 and the contents of the plea agreement, the Court
19 hereby accepts the terms of the plea agreement
20 and will embody those terms in the sentence
21 provided. Of course, overriding everything are
22 the factors set forth in 18 USC, Section 3553(a).

23 As I said, this is a fairly
24 common request, but there are a number of factors
25 here that I think maybe take it out of the

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1 mainstream, if you will, of the request. One is
2 the age of the children. You say fifteen months
3 is a lifetime to a child, and if you look at the
4 age if you're two-years-old, twenty-four-months
5 old, it's like, you know, that's two-thirds of
6 your life. So it's like if you're somebody who's
7 sixty-years-old, then it's forty years.

8 And depending on the child's
9 perception or point of view, fifteen months is a
10 lot longer to a child than it is to one of us
11 because it's a much larger -- just like for a
12 child a month is a long time, you know, if you're
13 fifty-years-old, it's, you know, one thirty-sixth
14 of your life. And if you're, you know,
15 sixty-years-old, a month is -- I can't give you
16 arithmetic, but it's infinitesimal, you know, so
17 the time is just much different to a child and
18 it's important to have a parent there.

19 The other thing is that your
20 involvement was somewhat peripheral. You
21 committed a crime and you're going to have to pay
22 the penalty for that, but I'm leery or concerned,
23 too, about your children paying. They're going
24 to pay a price for having a felon as a father,
25 and I'm concerned about adding to that. It's a

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1 unique situation with your wife, an unfortunate
2 situation.

3 So you moved for a downward
4 departure for substantial assistance, is that
5 correct, so I have to go down to what level now
6 to give him one month incarceration?

7 PROBATION OFFICER: Your Honor, it
8 would take it down to level ten which would be
9 Zone B in the 2009 guideline range.

10 THE COURT: All right, so I'll depart
11 down to level ten, one month, and what would be
12 the supervised release then? Three years?

13 PROBATION OFFICER: We would still
14 recommend five years, your Honor, with the
15 conditions we impose as well as a condition
16 that --

17 THE COURT: -- location monitoring?

18 PROBATION OFFICER: Location monitoring
19 for the remainder of the six months which would
20 be a five-months' term of home detention.

21 THE COURT: All right. Do you
22 understand that, Mr. Enloe?

23 THE DEFENDANT: I don't know.

24 THE COURT: And Mr. Draskovich can
25 explain it to you.

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1 THE DEFENDANT: I don't have the full
2 understanding of home detention. I mean what for
3 work?

4 MR. DRASKOVICH: You can work and go to
5 the grocery store.

6 THE COURT: Do you understand?

7 THE DEFENDANT: Yes.

8 THE COURT: All right.

9 So you are hereby committed to
10 the Bureau of Prisons for a term of one month to
11 be followed by five years of supervised release,
12 and the five years would include five months of
13 home confinement with electronic monitoring. So
14 that sentence is within the guideline range
15 determined by the Court and the Court finds no
16 reason to depart.

17 A mandatory penalty assessment
18 of \$100 is required by statute and due
19 immediately. Restitution, how long do you need
20 to defer restitution?

21 MR. SCHIESS: Your Honor, I need to
22 issue a couple more subpoenas so I would imagine
23 if we could do it for forty-five days.

24 THE COURT: All right, and then we
25 can't enter the judgment then until we get the

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1 restitution, is that right, David? Or can we do
2 an amended judgment?

3 THE CLERK: We can do an amended
4 judgment and leave out the restitution.

5 THE COURT: And just say restitution to
6 be determined at a later date.

7 MR. SCHIESS: Yes, and then I also have
8 the order of forfeiture to address before the
9 Court completes.

10 THE COURT: Oh, yeah, I though I saw
11 that. I'll get to that in just a minute.

12 So the restitution will be
13 determined at a later date and that will be --
14 when will that be, David?

15 THE CLERK: How many days out?

16 THE COURT: Forty-five he said, and if
17 you need more, let me know and we can reset this.

18 THE CLERK: Friday, March 1st at 10:00.

19 THE COURT: Friday, March 1st at 10:00.

20 MR. SCHIESS: Your Honor, I will be out
21 of the district on March 1st, could we do it the
22 following week?

23 THE COURT: Sure, and I've got to be at
24 the Ninth Circuit, is that when I go to the Ninth
25 Circuit?

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1 THE CLERK: You'll be gone, your Honor,
2 March 5th and March 6th which is Tuesday and
3 Wednesday.

4 THE COURT: But then I'm out the rest
5 of the week, too. It's the Ninth Circuit so
6 let's do it in two weeks then. We'll just make
7 it sixty days.

8 THE CLERK: Friday, March 15th at
9 10:00.

10 THE COURT: Friday, March 15, at 10:00
11 a.m. for the restitution which will be jointly
12 and severally with related case numbers 10-CR-300
13 and 10-304.

14 MR. SCHIESS: Before we do that, may I
15 with respect to the related cases, what I'd like
16 to do is submit to the Court the cases of the
17 co-defendants on those four transactions and I
18 can do that later today in writing.

19 THE COURT: Oh, all right, that's fine,
20 and then one of the reasons why is one of them is
21 Judge Reed's which is probably been reassigned to
22 me.

23 MR. SCHIESS: It's probably going to be
24 more than that maybe because the conspiracy
25 involved numerous properties and so if I can --

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1 THE COURT: Well, then let's just say
2 restitution will be jointly and severally with
3 the related case numbers.

4 MR. SCHIESS: But with those related to
5 these fraudulent transactions of these properties
6 and I will identify those as close as I can
7 today.

8 THE COURT: All right.

9 Due to the defendant's financial
10 situation the fine is being waived. Supervised
11 release will be imposed for a term of five years.
12 While on supervised release, the defendant shall
13 comply with the standard conditions of
14 supervision recommended by the Sentencing
15 Commission and the following mandatory conditions
16 required by statute: First, you shall not commit
17 another federal, state, or local crime during the
18 term of supervision.

19 Second, you shall not possess
20 illegal controlled substances. Understand,
21 please, revocation of supervision is mandatory
22 for possession of illegal controlled substances.
23 And, third, you shall refrain from any unlawful
24 use of a controlled substance and shall submit to
25 one drug test within fifteen days of the

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1 commencement of supervision to be followed by at
2 least two periodic drug tests thereafter not to
3 exceed 104 drug tests annually and, once again,
4 revocation is mandatory for refusal to comply.
5 Number four, you shall submit to DNA collection
6 and analysis as directed by the probation
7 officer.

8 In addition, the following
9 special conditions are imposed: Number one,
10 possession of weapons, you shall not possess,
11 have under your control, or have access to, any
12 firearm, explosive device, or other dangerous
13 weapon as defined by federal, state, or local
14 law.

15 Number two, warrantless search,
16 you shall submit to the search of your person,
17 property, residence, place of business, and
18 automobile under your control, to a search
19 conducted by the United States Probation Officer,
20 at a reasonable time and in a reasonable manner
21 based upon reasonable suspicion of contraband or
22 evidence of a violation of a condition of
23 supervision. Failure to submit to a search may
24 be grounds for a revocation of supervision, and
25 the defendant shall inform any other occupant

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1 that the premises are subject to a search
2 pursuant to this condition.

3 Number three, debt obligations,
4 you shall be prohibited from incurring new credit
5 charges, opening additional lines of credit, or
6 negotiating or consummating any financial
7 contracts without the approval of the probation
8 officer. Number four, access to financial
9 information, you shall provide the probation
10 officer access to any requested financial
11 information, including personal income tax
12 returns, authorization for release of credit
13 information, and any other business financial
14 information in which you have a control or
15 interest.

16 Number five, financial
17 polygraph/truth verification testing, you shall
18 submit to polygraph/truth verification testing as
19 directed by the probation officer to ensure
20 compliance with your financial condition. Number
21 six, employment restriction, you shall be
22 restricted from engaging in employment,
23 consulting, or any association with any mortgage,
24 real estate or financial lending or investment
25 business during the term of supervision.

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1 Number seven, home confinement with
2 location monitoring, you shall be confined to
3 home confinement with electronic monitoring, if
4 available, for a period of five months and you
5 shall pay a hundred percent of the costs of
6 electronic monitoring service.

7 Do you understand all of that,
8 sir?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you have a written copy
11 of those conditions?

12 PROBATION OFFICER: I do, your Honor.

13 THE COURT: All right, Mr. Enloe, in
14 your plea agreement, you've waived your rights to
15 appeal your conviction and sentence,
16 nevertheless, there may be certain appellate
17 right that cannot be waived. If you do desire to
18 appeal your conviction and sentence, you must
19 file a notice of appeal with this court within
20 fourteen days from today's date.

21 In the event you cannot afford
22 to pay the costs on appeal, you may request
23 permission to proceed in forma pauperis. If you
24 require the services of an attorney to assist you
25 on the appeal and cannot afford to pay an

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1 attorney, one will be appointed to represent you
2 at no cost to yourself but at government expense.

3 And if you require any
4 transcripts of any proceedings in order to
5 prosecute your appeal and cannot afford to pay
6 for those transcripts, they also will be provided
7 at government expense, do you understand all of
8 that?

9 THE DEFENDANT: Yes.

10 THE COURT: Yes?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right, any objection,
13 Mr. Draskovich, if I sign the order of
14 forfeiture?

15 MR. DRASKOVICH: No.

16 THE COURT: What's today, the 17th?

17 THE CLERK: The 18th, your Honor.

18 THE COURT: Oh, 18th, I'm a day behind.
19 (Signing.)

20 MR. SCHIESS: And, your Honor, will
21 that order be attached to the judgment?

22 THE COURT: Yes, sir, it will be.

23 MR. SCHIESS: Thank you.

24 THE COURT: The order of forfeiture
25 will be attached to the judgment, and then we'll

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1 do an amended judgment with the restitution.

2 MR. SCHIESS: In thinking about that,
3 when we do the order, the amended judgment, it's
4 probably appropriate at that time for me to give
5 you the related case numbers because then I'll
6 know who many of the related people are and I
7 will know whether I can prove it up on all four
8 of them and it will be simpler to do it then.

9 THE COURT: All right, and we'll do
10 that then in thirty days.

11 MR. SCHIESS: Sixty days.

12 MR. DRASKOVICH: Can I have the Court's
13 indulgence for a moment?

14 THE COURT: Take a moment. Sure, take
15 a moment.

16 (Attorney-client conference held.)

17 MR. DRASKOVICH: Your Honor, as to the
18 condition that he not be allowed to work in any
19 financial endeavors, would the Court considering
20 amending that to only with the approval of
21 probation because that's his area of work and
22 outside of these four issues or these four
23 transactions that Mr. Schiess had previously
24 addressed, this is where he's continued to work
25 and there's been no problem.

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1 THE COURT: Then we will do that only
2 with the approval of the probation officer.

3 MR. DRASKOVICH: Thank you.

4 THE COURT: Number six, only with the
5 approval of the probation officer.

6 All right, you got that, Mr.
7 Franzen?

8 PROBATION OFFICER: I do, your Honor.
9 Would you like me to add that into the
10 presentence report, the Court ordered revision?

11 THE COURT: Yes, sir, if you would,
12 just so that's complete as well.

13 PROBATION OFFICER: Okay.

14 THE COURT: All right, anything else
15 then?

16 MR. DRASKOVICH: As far as the
17 self-surrender date, I would ask that the Court
18 set the self-surrender date in July. His kids
19 are in school through June and it will be far
20 easier because his respective family members are
21 going to try to get the kids to their schools and
22 it will be less destructive in their lives.

23 THE COURT: I mean July 1st or after
24 the Fourth of July weekend, when is the Fourth of
25 July this year?

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1 MR. DRASKOVICH: On a Thursday, your
2 Honor.

3 THE COURT: So let's do it the
4 following Monday, how's that?

5 MR. DRASKOVICH: Thank you very much.

6 THE COURT: What would that be?

7 THE CLERK: Monday, July 8th --

8 THE COURT: Monday, July 8th.

9 THE CLERK: -- 2013, before noon.

10 MR. DRASKOVICH: And that will be here
11 at this marshal's office or will it be --

12 THE COURT: I'm not sure what the
13 Bureau of Prisons will designate. I was going to
14 say, Mr. Enloe, the Bureau of Prisons will
15 designate your facility probably about a month,
16 or two weeks to a month, before that date and you
17 have to show up there before noon on July 8th, do
18 you understand?

19 THE DEFENDANT: Yes.

20 THE COURT: If you aren't there at noon
21 straight up, they assume you've absconded and
22 they release the hounds. So be there, you know,
23 ten minutes early and, otherwise, I just assume
24 it would be here, but I think they will designate
25 someplace, all right?

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1 MR. DRASKOVICH: All right, thank you
2 very much.

3 THE COURT: Thank you. We will be in
4 recess.

5
6 (Whereupon, the proceedings concluded.)
7

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15 I hereby certify that pursuant
16 to Section 753, Title 28, United States Code, the
foregoing is a true and correct transcript of the
stenographically reported proceedings held in the
above-entitled matter.

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Date: July 23, 2013

/s/ Joy Garner
JOY GARNER, CCR 275
U.S. Court Reporter

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